

FILED

OCT 3 2005

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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11 Attorneys for Plaintiff

12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 GREG SUTTERFIELD, Derivatively On Behalf
16 of MICROMUSE, INC.,

No. C-04-0893 BZ

17 Plaintiff,
18 vs.

19 ORDER PRELIMINARILY
20 APPROVING SETTLEMENT AND
21 PROVIDING FOR NOTICE

22 LLOYD CARNEY, et al.,

23 Defendants.

24 - and -

25 MICROMUSE, INC., a Delaware corporation,

26 Nominal Defendant.

27

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1 WHEREAS, the parties have made application, pursuant to Federal Rule of Civil
 2 Procedure 23.1, for an order approving the settlement (the "Settlement") of the Federal
 3 Derivative Action, in accordance with the Stipulation and Agreement of Settlement dated
 4 September 28, 2005 (the "Stipulation"), which, together with the Exhibits annexed thereto, sets
 5 forth the terms and conditions set forth therein; and

6 WHEREAS, all capitalized terms contained herein shall have the same meanings as set
 7 forth in the Stipulation (in addition to those capitalized terms defined herein); and

8 WHEREAS, the Court having read and considered the Stipulation and the Exhibits
 9 annexed thereto:

10 NOW, THEREFORE, IT IS HEREBY ORDERED:

11 1. The Court does hereby preliminarily approve, subject to further consideration at
 12 the Settlement Hearing described below, the Stipulation and the Settlement set forth therein,
 13 including the terms and conditions for settlement and dismissal with prejudice of the Federal
 14 Derivative Action.

15 2. A hearing (the "Settlement Hearing") shall be held before this Court on
 16 December 7, 2005, at 1:30 p.m., at the United States Courthouse, 450 Golden Gate Ave, 15th
 17 Floor, Courtroom G, San Francisco, California, 94102, to determine whether the Settlement of
 18 the Federal Derivative Action on the terms and conditions provided for in the Stipulation is fair,
 19 reasonable and adequate to Micromuse and all persons who currently hold shares of Micromuse
 20 ("Current Micromuse Shareholders") and should be approved by the Court; and whether a
 21 Judgment as provided in ¶ 1.15 of the Stipulation should be entered herein. The court may
 22 adjourn the Settlement Hearing or modify any of the dates set forth herein without further notice
 23 to Current Micromuse Shareholders.

24 3. The Court approves, as to form and content, the Short Form of Notice of
 25 Proposed Settlement of Derivative Action ("Short Version Derivative Notice"), the Long Form
 26 of Notice of Proposed Settlement of Derivative Action for Posting on Website ("Long Version
 27 Derivative Notice"), and the Summary Notice for Publication of Settlement of Derivative Action
 28 ("Summary Derivative Notice") annexed respectively as Exhibits B-1, B-2, and B-3 hereto, and
 ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE
 No. C-04-0893 BZ

1 finds that the mailing and distribution of the Short Version Derivative Notice, posting of the
 2 Long Version Derivative Notice on the Micromuse website, and publication of the Summary
 3 Derivative Notice, substantially in the manner and form set forth in this Order, meets the
 4 requirements of Federal Rule of Civil Procedure 23.1 and due process under the United States
 5 Constitution and any other applicable laws, is the best notice practicable under the
 6 circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

7 4. A.B. Data, Ltd. (P.O. Box 170500, Milwaukee, Wisconsin, 53217) is authorized
 8 to act as "Notice Administrator" to supervise and administer the notice procedure as more fully
 9 set forth below:

10 (a) Not later than October 7, 2005, the Notice Administrator shall cause a
 11 copy of the Short Version Derivative Notice substantially in the form annexed as Exhibit B-1 to
 12 be mailed by first class mail to the Current Micromuse Shareholders;

13 (b) Not later than October 7, 2005, Defendants shall cause a copy of the Long
 14 Version Derivative notice substantially in the form annexed as Exhibit B-2 to be posted on the
 15 Micromuse website;

16 (c) Not later than October 17, 2005, the Notice Administrator shall cause the
 17 Summary Derivative Notice substantially in the form annexed as Exhibit B-3 to be published
 18 once in Investor's Business Daily; and

19 (d) Not later than November 15, 2005, the Notice Administrator shall serve
 20 on Derivative Plaintiff's Counsel and Derivative Plaintiff's Counsel shall file with the Court
 21 proof, by affidavit or declaration, of such mailing and publishing.

22 5. Nominees who held or hold the common stock of Micromuse on behalf of any of
 23 the Current Micromuse Shareholders shall send the Short Version Derivative Notice to such
 24 beneficial owners of Micromuse common stock within ten (10) days after receipt thereof, or
 25 send a list of the names and addresses of such beneficial owners to the Notice Administrator
 26 within ten (10) days of receipt thereof, in which event the Notice Administrator shall promptly
 27 mail the Short Version Derivative Notice to such beneficial owners.

1 6. All Current Micromuse Shareholders shall be bound by all orders, determinations
 2 and judgments in the Federal Derivative Action concerning the Settlement, whether favorable or
 3 unfavorable to the Current Micromuse Shareholders.

4 7. Pending final determination of whether the Settlement should be approved and
 5 applied in the Federal Derivative Action, all proceedings and all further activity between the
 6 Settling Parties regarding or directed toward the Federal Derivative Action, and save for those
 7 activities and proceedings relating to the Stipulation and the Settlement, shall be stayed.

8 8. Pending final determination of whether the Settlement should be approved,
 9 Derivative Plaintiff shall not commence, maintain or prosecute against Defendants or the other
 10 Released Persons, or any of them, any action or proceeding in any court or tribunal asserting any
 11 of the Released Claims.

12 9. Derivative Plaintiff's Counsel shall apply to the Court for an award of attorneys'
 13 fees and for reimbursement of expenses on or before November 15, 2005.

14 10. Any Current Micromuse Shareholder who wishes to object to the Settlement of
 15 the Federal Derivative Action, or to Derivative Plaintiff's Counsel's application for an award of
 16 attorneys' fees and for reimbursement of expenses, shall have a right to appear and be heard at
 17 the Settlement Hearing. Any Current Micromuse Shareholder may enter an appearance through
 18 counsel of such member's own choosing and at such member's own expense or may appear on
 19 their own. The Short Version Derivative Notice and Long Version Derivative Notice shall state
 20 that to object, Current Micromuse Shareholders must send a signed letter stating the reasons for
 21 any objection to the proposed settlement in *Greg Sutterfield, derivatively and on behalf of*
 22 *Micromuse, Inc. v. Lloyd Carney, et al., Defendants and Micromuse, Inc., Nominal Defendant,*
 23 Case No. C-04-0893 BZ, including their name, address, telephone number and signature, and
 24 proof of current ownership and the date(s) of purchase(s) of Micromuse stock. The Short
 25 Version Derivative Notice and Long Version Derivative Notice shall further require that the
 26 objections be filed with the Claims Administrator on or before November 15, 2005.

27 11. Any reply papers in response to any objections or in further support of the
 28 Settlement shall be filed with the Court and served on or before November 29, 2005.

ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE
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1 12. All reasonable expenses incurred in identifying and notifying Current Micromuse
2 Shareholders, shall be paid as set forth in the Stipulation.

3 13. If a Current Micromuse Shareholder fails to object to the Settlement of the
4 Federal Derivative Action, such Shareholder will have waived any and all objections and shall
5 forever be barred from making any objection to or otherwise challenging the Federal Derivative
6 Action Settlement, the Judgment dismissing the Federal Derivative Action, or any other
7 proceedings in the action, including an appeal.

8 14. Neither the Stipulation nor any document referred to therein nor any action taken
9 to carry out the Stipulation is, may be construed as or may be used as an admission by or against
10 the Defendants, or any of them, of any fault, wrongdoing or liability whatsoever.

11 15. The Court reserves the right to adjourn the date of the Settlement Hearing or
12 modify any other dates set forth herein without further notice to the Current Micromuse
13 Shareholders, and retains jurisdiction to consider all further applications arising out of or
14 connected with the Settlement. The Court may approve the Settlement, with such modifications
15 as may be agreed to by the Settling Parties, if appropriate, without further notice to the Current
16 Micromuse Shareholders.

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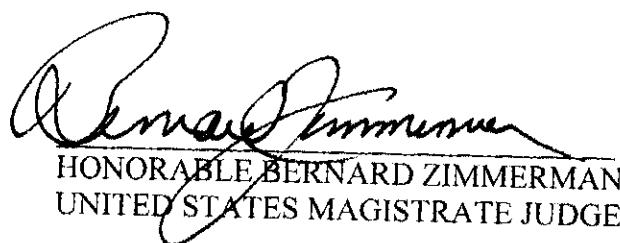
IT IS SO ORDERED

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Dated: 30 Oct 05



HONORABLE BERNARD ZIMMERMAN
UNITED STATES MAGISTRATE JUDGE

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ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE
No. C-04-0893 BZ
SF/21636915.1

Legal Tabs Co. 800-322-3022 

EXHIBIT B-1

1 FEDERMAN & SHERWOOD
2 William B. Federman
3 120 N. Robinson, Suite 2720
Oklahoma City, OK 73102
Telephone: (405) 235-1560
4 Facsimile: (405) 239-2112

5 GREEN WELLING LLP
6 Robert S. Green (SBN 136183)
595 Market Street, Suite 2750
7 San Francisco, CA 94105
Telephone: (415) 477-6700
8 Facsimile: (415) 477-6710

9 Attorneys for Plaintiff

10

11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

12

13

GREG SUTTERFIELD, Derivatively On Behalf
of MICROMUSE, INC.,

No. C-04-0893 BZ

14

Plaintiff,

15

vs.

16

LLOYD CARNEY, et al.,

Date: December 7, 2005

17

Defendants.

Time: 1:30 p.m.

18

- and -

Place: Courtroom G, 15th Floor

Judge: Bernard Zimmerman

19

20

MICROMUSE, INC., a Delaware corporation,

**FEDERAL DERIVATIVE ACTION
NOTICE OF PROPOSED
SETTLEMENT, FINAL APPROVAL
HEARING, AND MOTION FOR
ATTORNEY FEES (SHORT VERSION)**

21

Nominal Defendant.

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1 **TO: ALL HOLDERS OF MICROMUSE, INC. COMMON STOCK. PLEASE READ**
2 **THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.**

3 THIS NOTICE RELATES TO THE SETTLEMENT OF A SHAREHOLDERS' DERIVATIVE
4 ACTION AND CLAIMS ASSERTED THEREIN ON BEHALF OF MICROMUSE.

5 • The Settlement resolves a lawsuit alleging that certain of Micromuse's officers
6 and directors breached their fiduciary duties to Micromuse.

7 • The Settlement will require Micromuse to maintain and adopt certain therapeutic
8 governance measures for the benefit of the Corporation and all Micromuse
9 shareholders, which are intended to avoid the types of problems complained of in
10 the Federal Derivative Action, and which shall remain in effect for at least two
11 (2) years from the date they are adopted.

12 • Your legal rights will be affected whether you act, or do not act. Read this
13 Notice carefully.

14 This Notice is given pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and an
15 Order of the United States District Court for the Northern District of California (the "Court").
16 The purpose of this Notice is to inform you of the proposed Settlement of the Federal Derivative
17 Action (the "Action"), and of the hearing to be held by the Court to consider: (1) the fairness,
18 reasonableness, and adequacy of the Settlement; and (2) the applications for attorneys' fees. This
19 Notice describes rights you may have under the proposed Settlement and what steps you may
20 take in relation to Action. This Notice is not an expression of any opinion by the Court as to the
21 merits of any claims or any defenses asserted by any party in this Action, or the fairness or
22 adequacy of the proposed Settlement.

23 If you are a current Micromuse shareholder, you may object to the Settlement or any of
24 its terms. To object, you may write to the Claims Administrator setting forth your objection.
25 Further details regarding how and when to object are set forth below. If you are a current
26 Micromuse shareholder and do not object to the Settlement, you will have waived any and all
27 objections and shall forever be barred from making any objection to or otherwise challenging the
28 Settlement or any other proceedings in the Action, including an appeal.

1 Concurrently with this Settlement, a related class action lawsuit is being settled as well.
 2 The class action alleges that Micromuse and certain of its officers and directors misled investors
 3 by artificially inflating the price of Micromuse common stock and "smoothing" earnings in order
 4 to meet Wall Street's earnings expectations for the Company. A separate Notice of Proposed
 5 Settlement of the Class Action is included in this mailing. The settlement of the class action may
 6 affect your rights as described in that separate Notice. The Settlement of this Action is
 7 contingent on the Court's approval of the settlement of the related class action lawsuit.

8 **SUMMARY OF SETTLEMENT AND RELATED MATTERS**

9 **1. THE LITIGATION**

10 The Federal Derivative Action, filed on March 4, 2004, alleges that the Individual
 11 Defendants, current or former officers and directors of Micromuse, owed a duty to Micromuse
 12 and its shareholders to be reasonably informed about the business and operations of the
 13 Company. Plaintiff further alleges that the Individual Defendants breached these duties by
 14 actively participating in, encouraging, sponsoring and/or approving of the wrongful acts or
 15 omissions complained of in the Complaint, or purposely or recklessly disregarding those
 16 wrongful acts or omissions. Defendants, while continuing to deny all allegations of wrongdoing
 17 or liability, desire to settle and terminate the existing and potential claims against them, without
 18 in any way acknowledging any fault or liability.

19 A separate group of plaintiffs have filed derivative actions on behalf of Micromuse in
 20 state court, called *In re Micromuse Inc. Derivative Litigation*, California Superior Court, County
 21 of San Francisco, Lead Case No. 04-428489 (the "State Derivative Action"). The State
 22 Derivative Action makes allegations similar to those alleged in this Action: breach of fiduciary
 23 duty, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, and
 24 violations of the California Corporations Code, but includes an insider selling claim not currently
 25 contained in this Action. The state court has overruled in part defendants' demurrer to the
 26 complaint in the State Derivative Action and has delayed further proceedings in the State
 27 Derivative Action pending approval of this Settlement. If the Settlement of this Action is
 28 approved by the Court, the parties to the Settlement intend that it will bar other claims asserted

1 on behalf of Micromuse, including the claims asserted in the State Derivative Action. Further
2 information regarding the State Derivative Action may be obtained by contacting plaintiffs'
3 counsel for the State Derivative Plaintiffs: Jeffrey P. Fink, Robbins, Umeha & Fink, LLP, 610
4 West Ash Street, Suite 1800, San Diego, CA 92101, Telephone (619) 525-3990.

5 **2. FURTHER INFORMATION AVAILABLE**

6 For a more detailed statement of the matters involved in this Action, reference is made to
7 the files in this Action, which may be viewed online on the Stanford Securities Class Action
8 Clearinghouse website at <http://securities.stanford.edu/1029/MUSEE-01/> (class action), or by
9 visiting the "Pacer" website for the United States District Court for the Northern District of
10 California, at <https://ecf.cand.uscourts.gov/cand/index.html>. Alternatively, the files may be
11 inspected in person at the Office of the Clerk of the United States District Court for the Northern
12 District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102, during
13 regular business hours.

14 In addition, further information regarding the Action may be obtained by contacting:

15 William B. Federman
16 120 N. Robinson, Suite 2720
17 Oklahoma City, OK 73102
Telephone: (405) 235-1560
Counsel for Plaintiff

18 **3. THE SETTLEMENT**

19 Prior to entering into the Stipulation, Plaintiff's Counsel conducted an investigation
20 relating to the events and transactions alleged in the Complaint. Plaintiff's Counsel analyzed
21 evidence, documents and public filings of Micromuse, researched the applicable law with respect
22 to the claims against Defendants and the potential defenses thereto, and conducted confirmatory
23 discovery concerning the allegations in the Federal Derivative Action. Plaintiff, by his counsel,
24 conducted arms'-length negotiations with counsel for Defendants with the assistance of retired
25 Judge Eugene Lynch, with respect to a compromise and settlement of the Federal Derivative
26 Action with a view to settling the issues in dispute and achieving the best relief possible
27 consistent with the interest of Micromuse and its shareholders. The decision by Plaintiff's
28 Counsel and Defendants' Counsel to enter into the Settlement was made with knowledge of the
FEDERAL DERIVATIVE ACTION NOTICE OF PROPOSED SETTLEMENT (SHORT VERSION)
No. C-04-0893 BZ
SF/21636931.1

1 facts and circumstances underlying Plaintiff's claims and the strengths and weaknesses of those
 2 claims.

3 Counsel for Plaintiff believes that the Settlement described herein confers very
 4 substantial and immediate benefits upon Micromuse's shareholders. Plaintiff's Counsel deems
 5 such settlement to be fair, reasonable and adequate, and in the best interests of Micromuse's
 6 shareholders.

7 In full and final settlement of the Action, Micromuse will maintain and adopt certain
 8 corporate governance measures, which are intended to avoid the type of problems complained of
 9 in the Action, and which shall remain in effect for at least two (2) years from the date they are
 10 adopted. A detailed listing of the corporate governance measures that will be maintained or
 11 adopted as a result of the Settlement may be viewed online at Micromuse's web page,
 12 www.micromuse.com, by clicking on "company" and then on "investor relations," or by typing
 13 www.corporate-ir.net/ireye/ir_site.zhtml?ticker=MUSE&script=2100. In consideration for
 14 implementing these therapeutic corporate governance measures, upon the "Effective Date"
 15 Plaintiff and Micromuse (as a nominal defendant in the Federal Derivative Action) will release
 16 all claims in the Derivative Action against the "Released Parties." Further detail regarding the
 17 scope of the releases contained in the Settlement can be viewed online at www.micromuse.com,
 18 by clicking on "company" and then on "investor relations," or by typing www.corporate-ir.net/ireye/ir_site.zhtml?ticker=MUSE&script=2100.

20 Plaintiff's Counsel in the Federal Derivative Action intend to apply for fees and
 21 reimbursement of expenses of up to \$250,000.00 incurred in pursuing the Federal Derivative
 22 Action. Plaintiff's Counsel in the Federal Derivative Action have expended considerable time
 23 and effort in the prosecution of this litigation. Plaintiff's Counsel worked wholly on a
 24 contingency basis, and have advanced expenses of the litigation, in the expectation that if they
 25 were successful in obtaining relief in the Federal Derivative Action, they would be paid for their
 26 time and effort in prosecuting the litigation.

27 **4. THE FAIRNESS HEARING**

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1 A hearing on the fairness of the Settlement will be held before the Honorable Bernard
 2 Zimmerman in the United States Courthouse, 450 Golden Gate Avenue, 15th Floor, Courtroom
 3 G, San Francisco, California at 1:30 p.m., on December 7, 2005 (the "Settlement Fairness
 4 Hearing"). The purpose of the Settlement Fairness Hearing will be to determine (a) whether the
 5 Settlement of the Federal Derivative Action is fair, reasonable and adequate; and (b) whether the
 6 application for attorneys' fees and reimbursement of expenses should be approved. The Court
 7 may adjourn or continue the Settlement Fairness Hearing without further notice to you or to
 8 Micromuse's shareholders. If you intend to attend the Settlement Fairness Hearing, you should
 9 confirm the date and time with Plaintiff's Counsel.

10 **5. THE RIGHT TO OBJECT**

11 You may object to the Settlement. To object, you must send a signed letter as outlined
 12 below, stating that you object to the proposed settlement in *Greg Sutterfield, derivatively and on*
 13 *behalf of Micromuse, Inc. v. Lloyd Carney, et al., Defendants and Micromuse, Inc., Nominal*
 14 *Defendant*, Case No.C-04-0893-BZ. Be sure to include your name, address, telephone number
 15 and your signature; provide proof of current ownership and the date(s) of purchase(s) of
 16 Micromuse stock, and state the reasons why you object to the Federal Derivative Action
 17 Settlement. Your objection must be filed with the Claims Administrator at the following address
 18 on or before November 15, 2005:

19 Claims Administrator
 20 *Sutterfield v. Carney et al.*
 21 c/o A.B. Data, Ltd.
 22 P.O. Box 170500
 23 Milwaukee, Wisconsin, 53217

24 Dated:

25 By Order of the Court
 26 San Francisco, California
 27 CLERK OF THE COURT

Legal Tabs Co. 800-322-3022 

EXHIBIT B-2

1 FEDERMAN & SHERWOOD
2 William B. Federman
3 120 N. Robinson, Suite 2720
4 Oklahoma City, OK 73102
5 Telephone: (405) 235-1560
6 Facsimile: (405) 239-2112

7 GREEN WELLING LLP
8 Robert S. Green (SBN 136183)
9 595 Market St., Suite 2750
10 San Francisco, CA 94105
11 Telephone: (415) 477-6700
12 Facsimile: (415) 477-6710

13 Attorneys for Plaintiff

14

15

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18

GREG SUTTERFIELD, Derivatively On Behalf
19 of MICROMUSE, INC.,

No. C-04-0893 BZ

20

Plaintiff,

21

vs.

22

LLOYD CARNEY, et al.,

Date: December 7, 2005

23

Defendants.

Time: 1:30 p.m.

24

- and -

Place: Courtroom G, 15th Floor

25

MICROMUSE, INC., a Delaware corporation,

Judge: Bernard Zimmerman

26

Nominal Defendant.

27

28

**FEDERAL DERIVATIVE ACTION
NOTICE OF PROPOSED
SETTLEMENT, FINAL APPROVAL
HEARING, AND MOTION FOR
ATTORNEY FEES - (LONG VERSION
FOR POSTING ON WEBSITE)**

1 **TO: ALL HOLDERS OF MICROMUSE, INC. COMMON STOCK. PLEASE READ**
2 **THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.**

3 THIS NOTICE RELATES TO THE SETTLEMENT OF A SHAREHOLDERS' DERIVATIVE
4 ACTION AND CLAIMS ASSERTED THEREIN ON BEHALF OF MICROMUSE.

5 • The Settlement resolves a lawsuit alleging that certain of Micromuse's officers
6 and directors breached their fiduciary duties to Micromuse.

7 • The Settlement will require Micromuse to maintain and adopt certain therapeutic
8 governance measures for the benefit of the Corporation and all Micromuse
9 shareholders, which are intended to avoid the types of problems complained of in
10 the Federal Derivative Action, and which shall remain in effect for at least two
11 (2) years from the date they are adopted.

12 • Your legal rights will be affected whether you act, or do not act. Read this
13 Notice carefully.

14 This Notice is given pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and an Order
15 of the United States District Court for the Northern District of California (the "Court"). The
16 purpose of this Notice is to inform you of the proposed Settlement of the Federal Derivative
17 Action (the "Action"), and of the hearing to be held by the Court to consider: (1) the fairness,
18 reasonableness, and adequacy of the Settlement; and (2) the applications for attorneys' fees. This
19 Notice describes rights you may have under the proposed Settlement and what steps you may
20 take in relation to this Action. This Notice is not an expression of any opinion by the Court as to
21 the merits of any claims or any defenses asserted by any party in this Action, or the fairness or
22 adequacy of the proposed Settlement.

23 If you are a current Micromuse shareholder, you may object to the Settlement or any of
24 its terms. To object, you must write to the Claims Administrator setting forth your objection.
25 Further details regarding how and when to object are set forth below. If you are a current
26 Micromuse shareholder and do not object to the Settlement, you will have waived any and all
27 objections and shall forever be barred from making any objection to or otherwise challenging the
28 Settlement or any other proceedings in the Action, including an appeal.

1 Concurrently with this Settlement, a related Class Action lawsuit is being settled as well.
 2 The Class Action alleges that Micromuse and certain of its officers and directors misled investors
 3 by artificially inflating the price of Micromuse common stock and "smoothing" earnings in order
 4 to meet Wall Street's earnings expectations for the Company. A separate Notice of Proposed
 5 Settlement of the Class Action is included in this mailing. The settlement of the Class Action
 6 may affect your rights as described in that separate Notice. The Settlement of this Action is
 7 contingent on the Court's approval of the settlement of the related Class Action lawsuit.

8 **SUMMARY OF SETTLEMENT AND RELATED MATTERS**

9 **1. THE LITIGATION**

10 The Federal Derivative Action, filed on March 4, 2004, alleges that the Individual
 11 Defendants, current or former officers and directors of Micromuse, owed a duty to Micromuse
 12 and its shareholders to be reasonably informed about the business and operations of the
 13 Company. Plaintiff further alleges that the Individual Defendants breached these duties by
 14 actively participating in, encouraging, sponsoring and/or approving of the wrongful acts or
 15 omissions complained of in the Complaint, or purposely or recklessly disregarding those
 16 wrongful acts or omissions. Defendants, while continuing to deny all allegations of wrongdoing
 17 or liability, desire to settle and terminate the existing and potential claims against them, without
 18 in any way acknowledging any fault or liability.

19 A separate group of plaintiffs have filed derivative actions on behalf of Micromuse in
 20 state court, called *In re Micromuse Inc. Derivative Litigation*, California Superior Court, County
 21 of San Francisco, Lead Case No. 04-428489 (the "State Derivative Action"). The State
 22 Derivative Action makes allegations similar to those alleged in this Action: breach of fiduciary
 23 duty, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, and
 24 violations of the California Corporations Code, but includes an insider selling claim not currently
 25 contained in this Action. The state court has overruled in part defendants' demurrer to the
 26 complaint in the State Derivative Action and has delayed further proceedings in the State
 27 Derivative Action pending approval of this Settlement. If the Settlement of this Action is
 28 approved by the Court, the parties to the Settlement intend that it will bar other claims asserted

1 on behalf of Micromuse, including the claims asserted in the State Derivative Action. Further
 2 information regarding the State Derivative Action may be obtained by contacting plaintiffs'
 3 counsel for the State Derivative Plaintiffs: Jeffrey P. Fink, Robbins, Umeda & Fink, LLP,
 4 610 West Ash Street, Suite 1800, San Diego, CA 92101, Telephone (619) 525-3990.

5 **2. FURTHER INFORMATION AVAILABLE**

6 For a more detailed statement of the matters involved in this Action, reference is made to
 7 the files in this Action, which may be viewed online on the Stanford Securities Class Action
 8 Clearinghouse website at <http://securities.stanford.edu/1029/MUSEE-01/> (class action), or by
 9 visiting the "Pacer" website for the United States District Court for the Northern District of
 10 California, at <https://ecf.cand.uscourts.gov/cand/index.html>. Alternatively, the files may be
 11 inspected in person at the Office of the Clerk of the United States District Court for the Northern
 12 District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102, during
 13 regular business hours.

14 In addition, further information regarding the Action may be obtained by contacting:
 15

16 William B. Federman
 17 120 N. Robinson, Suite 2720
 Oklahoma City, OK 73102
 Telephone: (405) 235-1560
 18 Counsel for Plaintiff

3. THE SETTLEMENT

19 Prior to entering into the Stipulation, Plaintiff's Counsel conducted an investigation
 20 relating to the events and transactions alleged in the Complaint. Plaintiff's Counsel analyzed
 21 evidence, documents and public filings of Micromuse, researched the applicable law with respect
 22 to the claims against Defendants and the potential defenses thereto, and conducted confirmatory
 23 discovery concerning the allegations in the Federal Derivative Action. Plaintiff, by his counsel,
 24 conducted arms'-length negotiations with counsel for Defendants with the assistance of retired
 25 Judge Eugene Lynch, with respect to a compromise and settlement of the Federal Derivative
 26 Action with a view to settling the issues in dispute and achieving the best relief possible
 27 consistent with the interest of Micromuse and its shareholders. The decision by Plaintiff's
 28

1 Counsel and Defendants' Counsel to enter into the Settlement was made with knowledge of the
 2 facts and circumstances underlying Plaintiff's claims and the strengths and weaknesses of those
 3 claims.

4 Counsel for Plaintiff believes that the Settlement described herein confers very
 5 substantial and immediate benefits upon Micromuse's shareholders. Plaintiff's Counsel deem
 6 such settlement to be fair, reasonable and adequate, and in the best interests of Micromuse's
 7 shareholders.

8 In full and final settlement of the Action, Micromuse will adopt and/or maintain the
 9 following corporate governance measures, which are intended to avoid the type of problems
 10 complained of in the Action, and which shall remain in effect for at least two (2) years from the
 11 date they are adopted:

12 (a) With respect to the Board:

- 13 • Every Director shall stand for election for a two (2) year term.
- 14 • The Company shall encourage all independent directors to attend a Directors' College or Corporate Governance Program. The Company shall sponsor its director's attendance at any such program.
- 15 • At all times, at least a majority of the Board shall be "independent" in accordance with NASDAQ listing standards. One of the independent directors shall be the Lead Independent Director.
- 16 • The Board shall hold an executive session at least twice a year at which employee directors are not present. The Lead Independent Director shall schedule and set the agenda for these executive sessions.

17 (b) The Nominating and Corporate Governance Committee, the Compensation Committee, and the Audit Committee of the Board shall each be composed entirely of independent directors.

18 (c) The Compensation Committee shall set, in writing, annual and long-term performance goals for the CEO and evaluate the CEO's performance against such goals.

19 (d) The Compensation Committee shall meet at least once each calendar year in executive session without the CEO, and the CEO shall not be present for that portion of any meeting of the Compensation Committee during which the compensation of the CEO is considered.

1 of stockholders and to fill vacancies on the board of directors, subject to legal rights, if any,
 2 of third parties to nominate or appoint directors.

3 (o) The Nominating and Corporate Governance Committee shall, if and when requested
 4 periodically by the board, identify and recommend to the board the appointees to be selected
 by the board for service on the committees of the board.

5 (p) The Nominating and Corporate Governance Committee shall develop, assess and
 6 make recommendations to the board concerning appropriate corporate governance policies.

7 (q) The Audit Committee shall be comprised of at least three independent directors. Each
 8 committee member must be financially literate upon appointment to the committee, as
 9 determined by the board of directors pursuant to the listing standards. At all times, there
 10 must be at least one member of the Audit Committee who, as determined by the board of
 11 directors, meets the finance, accounting or comparable experience requirement of the listing
 12 standards. In addition, the board of directors must annually evaluate whether or not at least
 13 one member of the committee is an audit committee financial expert as defined in the SEC
 14 rules.

15 (r) The Audit Committee shall have sole authority and direct responsibility for the
 16 appointment, compensation, retention, termination, evaluations and oversight of the work of
 17 the independent auditors engaged by the company for the purpose of preparing or issuing an
 18 audit report of related work or performing other audit, review or attest services for the
 19 company. The independent auditors must report directly to the Audit Committee. The
 20 Audit Committee's authority includes, without limitation, resolution of disagreements
 21 between management and the auditors regarding financial reporting.

22 (s) The Board's Committees shall have standing authorization, on their own decision, to
 23 retain legal and/or other advisors of their choice, which advisors shall report directly to the
 24 Committee.

25 (t) The Audit Committee shall conduct quarterly meetings during which there shall be
 26 time set aside at each meeting for the Audit Committee to meet with the outside auditors
 27 without Company management being present.

28 (u) The Audit Committee shall review and discuss with appropriate members of the
 29 company's management the audited financial statements, related accounting and auditing
 30 principles and practices, and management's assessment of internal control over financial
 31 reporting and the related reports on internal control to be included in the company's Annual
 32 Report on Form 10-K.

33 (v) The Audit Committee shall timely request and receive from the independent auditors
 34 (prior to each filing of the audit report with the SEC) the report required in connection with
 35 the annual audit pursuant to applicable SEC rules concerning (1) all critical accounting
 36 policies and practices to be used; (2) all alternative treatments within generally accepted
 37 accounting principles for policies and practices related to material items that have been
 38 discussed with management of the company, including: (i) ramifications of the use of such
 39 alternative disclosures and treatments; and (ii) the treatment preferred by the independent
 40 auditors; and (3) other material written communications between the independent auditors

1 and the management of the company, such as any management letter or schedule of
 2 unadjusted differences.

3 (w) The Audit Committee shall conduct a quarterly review including a review of the
 4 quarterly financial statements of the Company and the results of the independent auditors'
 5 review of these financial statements. So long as the Company remains a publicly traded
 6 company, the Company shall engage an independent auditing firm to perform an annual
 7 audit of its financial statements.

8 (x) The Company shall rotate its independent auditing firm's lead partner and concurring
 9 partner at least once every five (5) years. The Company's independent auditor shall not
 10 provide any consulting services to the Company except as may be permissible under Section
 11 201 of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder.

12 (y) The Company's independent auditor may not perform any consulting work or provide
 13 personal tax or financial planning advice to any officer or director of the Company.

14 (z) Shareholder proposals may be made in accordance with the Company's bylaws,
 15 Article II.

16 (aa) The Board shall adopt the insider trading policy attached as Exhibit A to the
 17 Corporate Governance Measures attached as Exhibit A to the Settlement Stipulation.

18 (bb) The Board shall adopt the Code of Business Conduct attached as Exhibit B to the
 19 Corporate Governance Measures attached as Exhibit A to the Settlement Stipulation.

20 (cc) The Board shall adopt the Incentive Compensation Program attached as Exhibit C to
 21 the Corporate Governance Measures attached as Exhibit A to the Settlement Stipulation.

22 In addition to the above therapeutic corporate governance measures, Defendants, as part
 23 of the Settlement, have approved and will take all reasonable actions to cause the payment of
 24 funds made available by the Individual Defendants' Directors' and Officers' liability Insurers as
 25 required to resolve the related Class Action lawsuit pending against the Company.

26 In consideration for implementing the therapeutic corporate governance measures and
 27 resolving the Class Action, upon the "Effective Date" Derivative Plaintiff and Micromuse (as a
 28 nominal defendant in the Federal Derivative Action) will release all "Released Claims" (as
 defined in the Stipulation) against the "Released Persons" (as defined in the Stipulation).

29 As more specifically defined in the Stipulation, "Released Claims" means any and all
 30 claims, demands, rights, liabilities, and causes of action of every nature and description
 31 whatsoever, known or unknown, whether or not concealed or hidden, including, without
 32

1 limitation, claims based on federal, state, local, statutory or common law or any other law, rule
 2 or regulation, asserted or that might have been asserted by Micromuse or by Micromuse
 3 shareholders on behalf of Micromuse against Defendants or any of the Released Persons arising
 4 out of, based upon, or related in any way to the facts, transactions, events, matters, occurrences,
 5 acts, disclosures, statements, schemes, representations, failure(s) to act or omissions alleged in
 6 the Federal Derivative Action.

7 As more specifically defined in the Stipulation, "Released Persons" means the
 8 Defendants in the Federal Derivative Action, or any of them, or any of their present or former
 9 officers, directors, employees, agents, attorneys, stockholders, financial advisors, accountants,
 10 commercial bank lenders, investment bankers, representatives, affiliates, associates, parents,
 11 subsidiaries, general and limited partners and partnerships, heirs, executors, administrators,
 12 successors and assigns.

13 With respect to the Federal Derivative Action, the "Effective Date" will occur upon:
 14 (i) preliminary approval of the Settlement, entry of a Court Order approving the Settlement, and
 15 entry of Judgment; and (ii) approval of the settlement of the Class Action.

16 Plaintiff's Counsel in the Federal Derivative Action intend to apply for fees and
 17 reimbursement of expenses of up to \$250,000.00 incurred in pursuing the Federal Derivative
 18 Action. Plaintiff's Counsel in the Federal Derivative Action have expended considerable time
 19 and effort in the prosecution of this litigation. Plaintiff's Counsel worked wholly on a
 20 contingency basis, and have advanced expenses of the litigation, in the expectation that if they
 21 were successful in obtaining relief in the Federal Derivative Action, they would be paid for their
 22 time and effort in prosecuting the litigation.

23 **4. THE FAIRNESS HEARING**

24 A hearing on the fairness of the Settlement will be held before the Honorable Bernard
 25 Zimmerman in the United States Courthouse, 450 Golden Gate Avenue, 15th Floor, Courtroom
 26 G, San Francisco, California at 1:30 p.m., on December 7, 2005 (the "Settlement Fairness
 27 Hearing"). The purpose of the Settlement Fairness Hearing will be to determine (a) whether the
 28 Settlement of the Federal Derivative Action is fair, reasonable and adequate; and (b) whether the
 FEDERAL DERIVATIVE ACTION NOTICE OF PROPOSED SETTLEMENT (VERSION FOR WEBSITE)
 No. C-04-0893 BZ
 SF/21636952.1

1 application for attorneys' fees and reimbursement of expenses should be approved. The Court
2 may adjourn or continue the Settlement Fairness Hearing without further notice to you or to
3 Micromuse's shareholders. If you intend to attend the Settlement Fairness Hearing, you should
4 confirm the date and time with Plaintiff's Counsel.

5 **5. THE RIGHT TO OBJECT**

6 You may object to the Settlement. To object, you must send a signed letter as outlined
7 below, stating that you object to the proposed settlement in *Greg Sutterfield, derivatively and on*
8 *behalf of Micromuse, Inc. v. Lloyd Carney, et al., Defendants and Micromuse, Inc., Nominal*
9 *Defendant*, Case No.C-04-0893-BZ. Be sure to include your name, address, telephone number
10 and your signature; provide proof of current ownership and the date(s) of purchase(s) of
11 Micromuse stock, and state the reasons why you object to the Federal Derivative Action
12 Settlement. Your objection must be filed with the Claims Administrator at the following address
13 on or before November 15, 2005:

14
15 Claims Administrator
16 *Sutterfield v. Carney et al.*
17 c/o A.B. Data, Ltd.
18 P.O. Box 170500
19 Milwaukee, Wisconsin, 53217-8041
20 1 (800) 918-9012

21 Dated:

22 By Order of the Court
23 San Francisco, California
24 CLERK OF THE COURT

Legal Tabs Co. 800-322-3022 

EXHIBIT B-3

1 FEDERMAN & SHERWOOD
2 William B. Federman
3 120 N. Robinson, Suite 2720
Oklahoma City, OK 73102
Telephone: (405) 235-1560
Facsimile: (405) 239-2112

5 GREEN WELLING LLP
6 Robert S. Green (SBN 136183)
595 Market Street, Suite 2750
7 San Francisco, CA 94105
Telephone: (415) 477-6700
8 Facsimile: (415) 477-6710

9 Attorneys for Plaintiff

10

11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

12

13

GREG SUTTERFIELD, Derivatively On Behalf
of MICROMUSE, INC.,

No. C-04-0893 BZ

14

Plaintiff,

15

vs.

16

LLOYD CARNEY, et al.,

Date: December 7, 2005

17

Defendants.

Time: 1:30 p.m.

18

- and -

Place: Courtroom G, 15th Floor

19

Judge: Bernard Zimmerman

20

MICROMUSE, INC., a Delaware corporation,

FEDERAL DERIVATIVE ACTION

21

Nominal Defendant.

22

23

24

25

26

27

28

**SUMMARY NOTICE OF PENDENCY OF PROPOSED SETTLEMENT OF FEDERAL
DERIVATIVE ACTION AND SETTLEMENT HEARING**

TO: ALL PERSONS AND ENTITIES WHO OWN COMMON STOCK OF MICROMUSE
INC.

SUMMARY NOTICE OF PENDENCY OF PROPOSED SETTLEMENT OF DERIVATIVE ACTION
No. C-04-0893 BZ
SF/21636940.1

1 YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District
 2 Court for the Northern District of California, that a hearing will be held before the Honorable
 3 Bernard Zimmerman, United States Magistrate Judge, 450 Golden Gate Ave, 15th Floor,
 4 Courtroom G, San Francisco, California 94102, on December 7, 2005, at 1:30 p.m. (the
 5 "Settlement Fairness Hearing") for the purposes of determining (1) the fairness, reasonableness,
 6 and adequacy of the Settlement; and (2) the applications for attorneys' fees.

7 The Federal Derivative Action, filed on March 4, 2004, alleges that the Individual
 8 Defendants, current or former officers and directors of Micromuse, owed a duty to Micromuse
 9 and its shareholders to be reasonably informed about the business and operations of the
 10 Company. Plaintiff further alleges that the Individual Defendants breached these duties by
 11 actively participating in, encouraging, sponsoring and/or approving of the wrongful acts or
 12 omissions complained of in the Complaint, or purposely or recklessly disregarding those
 13 wrongful acts or omissions. Defendants, while continuing to deny all allegations of wrongdoing
 14 or liability, desire to settle and terminate the existing and potential claims against them, without
 15 in any way acknowledging any fault or liability. Further detail regarding the Settlement may
 16 be viewed online at Micromuse's web page, www.micromuse.com, by clicking on "company" and
 17 then on "investor relations," or by typing in your web browser:
 18 www.corporate-ir.net/ireye/ir_site.zhtml?ticker=MUSE&script=2100. To object, you must
 19 send a signed letter as outlined below, stating that you object to the proposed settlement in *Greg
 20 Sutterfield, derivatively and on behalf of Micromuse, Inc. v. Lloyd Carney, et al., Defendants and
 21 Micromuse, Inc., Nominal Defendant*, Case No.C-04-0893-BZ. You must include your name,
 22 address, telephone number and your signature; provide proof of current ownership and the
 23 date(s) of purchase(s) of Micromuse stock, and state the reasons why you object to the
 24 Derivative Action Settlement. Your objection must be filed with the Claims Administrator at the
 25 following address on or before November 15, 2005:

26
 27 Claims Administrator
Sutterfield v. Carney et al.
 28 c/o A.B. Data, Ltd.

SUMMARY NOTICE OF PENDENCY OF PROPOSED SETTLEMENT OF DERIVATIVE ACTION
 No. C-04-0893 BZ
 SF/21636940.1

1 P.O. Box 170500
2 Milwaukee, Wisconsin, 53217-8041
1 (800) 918-9012

3 If you are a current Micromuse shareholder and do not submit an objection, you will have
4 waived any and all objections and shall forever be barred from making any objection to or
5 otherwise challenging the Derivative Action Settlement, the final judgment dismissing the
6 Derivative Action, or any other proceedings in the action.

7 Inquiries may be made to Derivative Plaintiffs' Counsel:

8 William B. Federman
9 Federman & Sherwood
10 120 N. Robinson, Suite 2720
Oklahoma City, OK 73102
Telephone: (405) 235-1560

11 **PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE**
12 **REGARDING THIS NOTICE.**

13 Dated:

14 BY ORDER OF THE COURT

15 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA